

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 2:11-cv-0859

JAMES P. WOOLEY, DOROTHY FAYE
WOOLEY, AND STROSNIDER DRUG STORE INC.
d/b/a SAV-RITE PHARMACY,

Defendants.

**UNITED STATES' SUPPLEMENTAL MOTION
AND NOTICE FOR PRELIMINARY INJUNCTION**

Now comes the United States of America (United States) and hereby supplements its motion for preliminary injunction and provides NOTICE to the parties and their attorneys as follows:

On November 4, 2011, the United States filed a complaint for injunctive relief (ECF No. 1) and a motion for a preliminary injunction (ECF No. 2) to prevent a continuing and substantial injury to the United States. Through its motion, the United States seeks a preliminary injunction freezing the property and assets of James P. Wooley, Dorothy Faye Wooley, and Strosnider Drug Store Inc. (Strosnider) d/b/a/ Sav-Rite Pharmacy, derived from the commission of Federal health care offenses, or property and assets of equivalent value, and a preliminary injunction prohibiting any person from withdrawing, transferring, removing, dissipating or disposing of such property, or assets, or property or assets of

equivalent value. The motion for preliminary injunction is supported by the Affidavit of Special Agent Mary Ann Withrow (SA Withrow), United States Department of Health and Human Services, Office of Inspector General, Office of Investigation. (ECF No. 2, Att. 1).

Since the filing of the complaint for injunctive relief and motion for preliminary injunction James P. Wooley, Dorothy Faye Wooley, and Strosnider have engaged in additional activity warranting the requested preliminary injunction.

On November 8, 2011, four days after the United States filed the complaint for injunctive relief and motion for preliminary injunction, Strosnider filed a bankruptcy petition under Chapter 11. In re Strosnider Drug Store Inc., Bankruptcy Case No. 11-20793. (Ex. 1). Strosnider listed seven creditors and a total of \$664,945.66 in unsecured claims. (Ex. 1, p. 4).

On June 30, 2011, little more than four months before the bankruptcy petition was filed, James P. Wooley executed sworn "Financial Statement of Debtor" forms for himself and on behalf of Strosnider and voluntarily provided them to the United States in aid of settlement discussions. (Exs. 2-3).¹ None of the debts identified in the bankruptcy petition were disclosed on the sworn financial statements provided to the United States. Accordingly,

¹ The Financial Statement of Debtor forms have been redacted in compliance with LR Civ P 5.2.1.

either these debts were omitted from the sworn financial statements provided to the United States or Strosnider incurred these debts after the execution of the sworn financial statements to the detriment of the United States.

On November 9, 2011, nine days after the sale, the United States received a copy of a Purchase and Sale Agreement (Sale Agreement) between Strosnider and Southfork General Management LLC (Southfork). (Ex. 4). According to the Sale Agreement, Strosnider sold all of its assets on October 31, 2011, except its accounts receivable and cash on hand, to Southfork for \$1,350,000. At the closing, Strosnider received an initial payment of \$400,000, and will receive an additional payment of \$100,000 in 90 days after the sale, and another payment of \$100,000 in 150 days after the sale. The balance of the purchase price is to be paid in monthly installments over the next five years. The sale of Strosnider's assets occurred only eight days before the bankruptcy filing. The \$400,000 initial payment from the Strosnider sale was placed in an account in Strosnider's name at the Inez Deposit Bank, 41 West Main Street, Inez, Kentucky, with Defendant Dorothy Faye Wooley as the sole signatory. Dorothy Faye Wooley is the wife of James P. Wooley, a stockholder, officer and former employee of Strosnider, and is among the creditors identified in the bankruptcy filing for \$239,420 in "loans" but not included on the financial statement of debtor forms.

The Sale Agreement signed by James P. Wooley, contains the following affirmative misrepresentation at paragraph 2.4: "No suit, action or legal, administrative, arbitration or other proceeding *or governmental investigation is pending, or to Seller's knowledge is threatened against Seller or seller's Kermit Store* except. . ." two pending and unrelated state civil actions. (Emphasis added) (Ex. 4, ¶ 2.4). At the time of the execution of the Sale Agreement, James P. Wooley, Dorothy Faye Wooley, Strosnider and their counsel were well aware of the pendency of a "governmental investigation" of Strosnider (seller's Kermit store) and James P. Wooley (Seller). Indeed, James P. Wooley had entered into two agreements with the United States related to the criminal investigation and had numerous communications, both verbal and in writing, with the United States related to the civil investigation.

Upon motion of the United States and by agreed order entered November 15, 2011, bankruptcy counsel has been directed to take immediate possession of all of Strosnider's cash and the cash equivalents in its control or that come into its possession or control and hold those assets in the attorney trust account pending further order of the court. (Ex. 5)

Though Strosnider has sought bankruptcy protection, the complaint for injunctive relief, filed pursuant to 18 U.S.C. § 1345 and the motion for a preliminary injunction are excepted from the automatic stay provisions of the bankruptcy code pursuant to 11

U.S.C. § 362(b)(4). Moreover, neither James P. Wooley nor Dorothy Faye Wooley are in bankruptcy.

WHEREFORE, the United States does hereby provide NOTICE to the parties, James P. Wooley, Dorothy Faye Wooley, and Strosnider Drug Store Inc. and their counsel, that the United States is seeking a preliminary injunction against James P. Wooley, Dorothy Faye Wooley and Strosnider Drug Store Inc., freezing property or assets derived from the commission of a Federal health care offense, or property or assets of equivalent value, and prohibiting any person from withdrawing, transferring, removing, dissipating or disposing of such property, or assets, or property or assets of equivalent value.

Respectfully submitted,

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s/Carol A. Casto

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2011, I filed the foregoing with the Clerk of the Court using the CM/ECF system and have notified the following via electronic mail and regular mail:

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